

Wiretap Test Review Set In Gambling

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Lawyers for a defendant in a Maryland gambling case have until July 1 to reply to a request by the U.S. Solicitor General to review a case that was thrown out of court because of alleged violations of U.S. wire tap guidelines.

Robert H. Bork, the solicitor general, made the request after arguing the lower courts have drawn too fine a line in requiring law enforcement agents to identify all persons they might arrest when asking for court authority to tap telephone lines.

According to government lawyers, only the "target men" in an investigation needs to be identified in requests made to judges for wiretap authority.

Arnold M. Weiner and M. Albert Figinski, the lawyers for Calman Bernstein, claim the FBI was lax in following strict guidelines set up by Congress for the use of wiretaps.

In 1972, U.S. District Court Judge R. Dorsey Watkins in Baltimore signed an order to allow telephone taps during a gambling investigation that eventually led to 10 arrests.

Nine of the defendants entered guilty pleas, but Bernstein, 42, of Baltimore, challenged his arrest. Weiner argued before U.S. District Court Judge C. Stanley Blair that his client was never named in the wiretap order although he was known to FBI agents.

Blair dismissed the case against Bernstein, noting that Congress had required "a high degree of particularity" in wire tap orders to protect an individual's right to privacy. The FBI neglected to identify Bernstein in the order in violation of the requirement that all persons to be wiretapped and possibly arrested be listed "if known."

The government appealed the case to the U.S. Circuit Court of Appeals but again lost when the court decided the issue of privacy was paramount.

Bork said in his request to the Supreme Court that unless FBI agents are allowed to name only the targets of an investigation, they would be faced with naming "any person anywhere in the world" who might place a call to the tapped phone.